

REMARKS

Examiner's Rejections

The foregoing amendment and remarks which follow are responsive to the Initial Office Action mailed May 18, 2004. In that Office Action, the Examiner rejected Claims 40-50 and 53-57 under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-16 of U.S. Patent No. 6,639,185. In addition, the Examiner rejected Claims 51 and 52 under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-16 of U.S. Patent No. 6,639,185 in view of U.S. Patent No. 3,947,134.

Additionally, the Examiner rejected Claims 40, 42-44, 46-50 and 53-57 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,084,080 issued to McMahan (the McMahan reference). Furthermore, the Examiner rejected Claims 41 and 50 under 35 U.S.C. §103(a) as being unpatentable over the McMahan reference in view of U.S. Patent No. 6,018,145 issued to Moreno (the Moreno reference). The Examiner rejected claims 50 and 52 under 35 U.S.C. §103(a) as being unpatentable the McMahan reference in view of U.S. Patent No. 3,947,134 issued to Ogawa (the Ogawa reference).

Traversal of Rejection of Claims 40-57 Under the Judicially Created Doctrine of Obviousness Type Double Patenting

In response to the Examiner's rejection of Claims 40-57 under the judicially created doctrine of obviousness type double patenting as being unpatentable under the McMahan reference, Applicants have submitted a Terminal Disclaimer in compliance with 37 C.F.R.

§1.321(c). As such, Applicants respectfully submit that the submission of the Terminal Disclaimer overcomes the Examiner's rejections of Claims 40-57 under the judicially created doctrine of obviousness type double patenting.

Amended Independent Claim 40

Applicants set forth below their arguments for amended base Claim 40 in numerical order in the interest of clarity and to assist the Examiner in facilitating the prosecution of the subject patent application. In this regard, Applicants will lay out the substantial distinctions between the present invention (as recited in amended base Claim 40) and the prior art references cited thereagainst, namely, McMahan.

1. The Present Invention In Amended Base Claim 40

Applicants have amended base Claim 40 to incorporate features that are novel and unobvious over the relevant prior art references, namely, McMahan. The proposed amendments are not believed to add new matter or necessitate further searching.

The apparatus of the present invention, as reflected in amended base Claim 40, includes the emphasized features of: (1) the liquid container assembly being fixedly engaged to at least one of the body members, and (2) the liquid including antimicrobial additives. As will be demonstrated below, Applicants respectfully submit that such recitation of elements along with other new enumerated elements of amended base Claim 40, will be sufficient to patentably distinguish the present invention over the cited prior art of relevance, namely, McMahan.

2. Rejection of Independent Claim 40 Under 35 U.S.C. §102(b)

Independent Claim 40 was rejected under 35 U.S.C. §102(b) as being anticipated by McMahan.

In rejecting Claim 40 under 35 U.S.C. §102(b), the Examiner indicates that McMahan discloses a “housing comprising a body member 20 with an upper housing wall and having a peripheral wall which engages a base member 11, a metal water container 13, 15 in the housing, with apertures 17, and a heating element 31 adjacent the water container to heat the housing contents”. (Office Action, Page 3).

3. The Standard for 35 U.S.C. §102 Rejection

As is well-known, anticipation cannot be established unless a single prior art reference discloses each and every element of the claimed invention. Structural Rubber Co. v. Park Rubber Co., 749 F.2d 707, 223 U.S.P.Q. 1264 (Fed. Cir. 1984). Further, for anticipation to apply, all of the claimed elements must be found in exactly the same situation and united in the same way to perform the identical function in a single unit of the prior art. (See, e.g., Studiengesellschaft Kohle m.b.H. v. Dart Industries, 762 F.2d 724, 726, 220 U.S.P.Q. 841, 842 (Fed. Cir. 1984)). Even further, any inherency which is applied in the context of anticipation “does not embrace probabilities or possibilities.” Trintec Industries Inc. v. Top-U.S.A. Corp., 63 U.S.P.Q.2d 1597, 1601 (Fed. Cir. 2002) (holding of no express or inherent anticipation in a scenario where a catalog taught printing methods but not “creating” anything in a computer as the latter was not disclosed therein). As will be demonstrated below, McMahan fails to anticipate the present invention in view of such legal standard.

4. Traversal of Rejection Under 35 U.S.C. §102(b)

Applicants submit that, as understood, the cited prior art references, when taken either alone or in any proper combination, do not teach or suggest the emphasized features of the present invention. More specifically, the cited prior art references are not understood to teach or suggest the features of: (1) the liquid container assembly being fixedly engaged to at least one of the body members, and (2) the liquid including antimicrobial additives, as claimed in amended Claim 40.

Regarding the claimed feature of the liquid container assembly being fixedly engaged to at least one of the body members, Applicants submit that such structural configuration is described in the specification wherein “the upper tank surface 34 of the tank assembly 32 collectively forms the inside compartment 30 with the interior-side housing wall 36” and “the upper tank surface 34 becomes vertically surrounded as the tank end 38 of the interior-side housing wall 36 is rested against the upper tank peripheral edge 40”. (Specification, Page 7, Paragraph 0030). Moreover, each of Figures 3-7 clearly illustrate that the liquid container assembly (i.e., the tank assembly) is fixedly connected to the tank end.

Applicants submit that even though the McMahan reference is understood to be generally directed toward an apparatus such as a towel moistening and heating device, McMahan is not understood to disclose the present invention’s specific combination of elements as recited in independent Claim 40. More specifically, Applicants submit that the water tray of McMahan (the functional equivalent of the liquid container assembly of Applicants’ invention) is not fixedly engageable to the support frame (the functional equivalent of one of the body members of Applicants’ invention). Rather, Applicants submit that the water tray of McMahan is

removable from the support frame. For example, McMahan expressly notes that “the tray 13 may be readily removed by lifting the tray upward so that the legs 34 disengage with the frame support 11”. (Figure 2-3; Col. 3, ll 61-63). As such, Applicants respectfully submit that McMahan appears to be silent regarding the feature of the liquid container assembly being fixedly engaged to at least one of the body members as is claimed in amended Claim 40.

Regarding the claimed feature of the liquid including antimicrobial additives, Applicants submit that McMahan is silent as to such concept. The apparatus of McMahan illustrated in Figure 2 is described as including the “[w]ater tray 13 support[ing] a small quantity of water indicated by numeral 30”. (Column 3, Lines 35-36). However, Applicants respectfully submit that McMahan fails to teach, suggest or even imply the concept of the water including antimicrobial additives. In this regard, Applicants submit that McMahan fails to disclose such emphasized feature of amended Claim 40.

Applicants therefore respectfully submit that the amended base Claim 40 is allowable. Insofar as amended base Claim 40 is believed to be allowable, its dependent claims, namely Claims 41-57 are also believed to be allowable as they are further limitations of Claim 40. For the foregoing reasons, Applicants respectfully request entry of the proposed amendment to Claim 40 and request reconsideration of the rejection under 35 U.S.C. §102(b).

5. Rejection of Claims 41 and 45 Under 35 U.S.C. §103(a)

Claims 41 and 45 were rejected under 35 U.S.C. §103(a) as being unpatentable over McMahan in view of Moreno.

In rejecting Claims 41 and 45 under 35 U.S.C. §103(a), the Examiner indicates that the “Claims [of the present application] differ from [McMahan] only in calling for plastic construction [and] a pivoting lid”. (Office Action, Page 3). The Examiner further indicates that “[Moreno] discloses, at Figures 4 and 5, and Column 4, Lines 37-50, plastic construction and a pivoting lid in a towel warmer”. (Office Action, Page 3). The Examiner then indicates that “It would have been obvious to utilize plastic construction and a pivoting lid, after the manner of [Moreno], to lower manufacturing costs, and provide more convenient access to the housing contents”. (Office Action, Pages 3-4).

6. Traversal of Rejection of Claims 41 and 45 Under 35 U.S.C. §103(a)

As described above, McMahan does not appear to teach or suggest the features of the liquid container assembly being fixedly engaged to at least one of the body members, and the liquid including antimicrobial additives, as claimed in amended Claim 40. Likewise, neither McMahan nor the combination of McMahan and Moreno, appear to teach the features of the liquid container assembly being fixedly engaged to at least one of the body members, and the liquid including antimicrobial additives.

Applicants submit that because McMahan and Moreno, either taken alone or in combination, fail to teach every element as claimed, a *prima facie* case of obviousness is not established and the rejection is therefore traversed. For this reason, Claims 41 and 45, which are

dependent upon amended base Claim 40, are believed to be patentable over the cited and applied references.

7. Rejection of Claims 51 and 52 Under 35 U.S.C. §103(a)

Claims 51 and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over McMahan in view of Ogawa.

In rejecting Claims 51 and 52, under 35 U.S.C. §103(a), the Examiner indicates that “[Moreno] does not explicitly disclose antimicrobial agents”. The Examiner then indicates that “[Ogawa] discloses antimicrobial agent usage in moist tissue dispenser”. (Office Action, Page 4). The Examiner then indicates that “It would have been obvious to use such agents to avoid bacterial growth in the heated items”. (Office Action, Page 4).

8. Traversal of Rejection of Claims 51 and 52 Under 35 U.S.C. §103(a)

By this amendment, Applicants have canceled Claim 51. Therefore, the rejection of Claim 51 under 35 U.S.C. §103(a) is moot.

Regarding the rejection of Claim 52, Applicants submit that Ogawa fails to disclose the feature of the liquid container assembly being fixedly engaged to at least one of the body members, as claimed in amended Claim 40. Likewise, neither McMahan nor the combination of McMahan and Ogawa, appear to teach the features of the liquid container assembly being fixedly engaged to at least one of the body members.

Applicants submit that because McMahan and Ogawa, either taken alone or in combination, fail to teach every element as claimed, a *prima facie* case of obviousness is not

established and the rejection is therefore traversed. For this reason, Claim 52, which is dependent upon amended base Claim 40, is believed to be patentable over the cited and applied references.

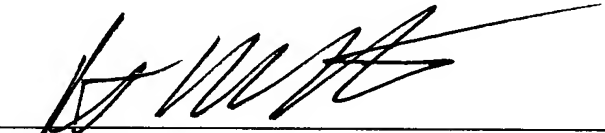
Request for Allowance

On the basis of the foregoing, Applicants respectfully submit that all the stated grounds of rejections have been overcome, and that Claims 20-50 and 52-57 are in condition for allowance. An early notice of allowance is therefore respectfully requested. Should the Examiner have any suggestions for expediting allowance of the application, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

Respectfully submitted,

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